

House Engrossed
FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 131

HOUSE BILL 2289

AN ACT

AMENDING SECTION 45-802.01, ARIZONA REVISED STATUTES; AMENDING SECTION 45-802.01, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; RELATING TO UNDERGROUND WATER STORAGE, SAVINGS AND REPLENISHMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-802.01, Arizona Revised Statutes, is amended to
3 read:

4 45-802.01. Definitions

5 Unless the context otherwise requires, the terms defined in section
6 45-402 have the same meanings in this chapter and:

7 1. "Aquifer" means a geologic formation that contains sufficient
8 saturated material to be capable of storing water and transmitting water in
9 usable quantities to a well.

10 2. "Area of impact" means, as projected on the land surface, the area
11 where the stored water has migrated or is located.

12 3. "CERCLA" means the comprehensive environmental response,
13 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
14 2767; 42 United States Code sections 9601 through 9657), commonly known as
15 "superfund".

16 4. "Constructed underground storage facility" means a facility that
17 meets the requirements of section 45-811.01 and that is designed and
18 constructed to store water underground pursuant to permits issued under this
19 chapter.

20 5. "District" means a groundwater replenishment district established
21 under title 48, chapter 27.

22 6. "District member" means a member of the groundwater replenishment
23 district as provided by title 48, chapter 27.

24 7. "Electrical district" means a corporate body established pursuant
25 to title 48, chapter 12.

26 8. "Groundwater savings facility" means a facility that meets the
27 requirements of section 45-812.01 in an active management area or an
28 irrigation non-expansion area at which groundwater withdrawals are eliminated
29 or reduced by recipients who use in lieu water on a gallon-for-gallon
30 substitute basis for groundwater that otherwise would have been pumped from
31 within that active management area or irrigation non-expansion area.

32 9. "In lieu water" means water that is delivered by a storer to a
33 groundwater savings facility pursuant to permits issued under this chapter
34 and that is used in an active management area or an irrigation non-expansion
35 area by the recipient on a gallon-for-gallon substitute basis for groundwater
36 that otherwise would have been pumped from within that active management area
37 or irrigation non-expansion area.

38 10. "Long-term storage account" means an account established pursuant
39 to section 45-852.01.

40 11. "Long-term storage credit" means stored water that meets the
41 requirements of section 45-852.01 and that has been credited to a long-term
42 storage account.

43 12. "Managed underground storage facility" means a facility that meets
44 the requirements of section 45-811.01 and that is designed and managed to
45 utilize the natural channel of a stream to store water underground pursuant

1 to permits issued under this chapter through artificial and controlled
2 releases of water other than surface water naturally present in the stream.
3 Surface water flowing in its natural channel is not a managed underground
4 storage facility.

5 13. "Master replenishment account" means an account established
6 pursuant to section 45-858.01 for a groundwater replenishment district.

7 14. "Recipient" means a person who receives in lieu water for use at a
8 groundwater savings facility.

9 15. "Recoverable amount" means the amount of water, as determined by
10 the director, that will reach the aquifer through water storage.

11 16. "Replenishment" means the storage of water or use of long-term
12 storage credits by a groundwater replenishment district to fulfill its duties
13 under title 48, chapter 27, article 3, by a multi-county water conservation
14 district to fulfill its duties under title 48, chapter 22, article 4 or by an
15 active management area water district to fulfill its duties under title 48,
16 chapter 28, article 7.

17 17. "Reserve target" has the same meaning prescribed in section
18 48-3701.

19 18. "Storage facility" means a groundwater savings facility or an
20 underground storage facility.

21 19. "Stored water" means water that has been stored or saved
22 underground pursuant to a storage permit issued under this chapter.

23 20. "Storer" means the holder of a water storage permit issued pursuant
24 to section 45-831.01 or a person to whom a water storage permit has been
25 conveyed pursuant to section 45-831.01, subsection F.

26 21. "Underground storage facility" means a constructed underground
27 storage facility or a managed underground storage facility.

28 22. "Water that cannot reasonably be used directly" means water that
29 the storer cannot reasonably put to a direct use during the calendar year,
30 including:

31 (a) Except as provided in subdivision (b) or except for an
32 agricultural improvement district as provided in subdivision (d), if the
33 storer is a municipal provider, the amount of central Arizona project water
34 that exceeds the amount of mined groundwater withdrawn during the calendar
35 year by the storer in the active management area in which the storer's
36 service area is located. If the storer withdrew mined groundwater during a
37 calendar year in which the storer stored central Arizona project water
38 underground pursuant to the storage permit, the amount of central Arizona
39 project water stored underground during that year equal to the amount of
40 mined groundwater withdrawn from the active management area in which the
41 storer's service area is located shall not be credited to the storer's
42 long-term storage account but may be considered as being available for
43 recovery by the storer on an annual basis under section 45-851.01. In
44 calculating the amount of mined groundwater withdrawn by the storer from the
45 active management area, the director, at the request of the storer, shall

1 exclude any groundwater withdrawn, treated and delivered for direct use as
2 part of a remedial action undertaken pursuant to CERCLA or title 49, chapter
3 2, article 5. For the purposes of this subdivision, "mined groundwater" and
4 "municipal provider" have the same meanings prescribed in section 45-561.

5 (b) If the storer is a municipal provider that has been designated as
6 having an assured water supply pursuant to section 45-576, the amount of
7 central Arizona project water that exceeds the amount of deficit groundwater
8 withdrawn during the calendar year by the storer in the active management
9 area in which the storer's service area is located. If the storer withdrew
10 deficit groundwater during a calendar year in which the storer stored central
11 Arizona project water underground pursuant to the storage permit, the amount
12 of the central Arizona project water stored underground during that year
13 equal to the amount of deficit groundwater withdrawn from the active
14 management area in which the storer's service area is located shall not be
15 credited to the storer's long-term storage account but may be considered as
16 being available for recovery by the storer on an annual basis pursuant to
17 section 45-851.01. In calculating the amount of deficit groundwater
18 withdrawn by the storer from the active management area, the director, at the
19 request of the storer, shall exclude any groundwater withdrawn, treated and
20 delivered for direct use as part of a remedial action undertaken pursuant to
21 CERCLA or title 49, chapter 2, article 5. For the purposes of this
22 subdivision, "municipal provider" has the same meaning prescribed in section
23 45-561 and "deficit groundwater" means that amount of groundwater withdrawn
24 within an active management area for delivery and use within a service area
25 by a municipal provider in excess of the amount of groundwater that may be
26 withdrawn by the municipal provider consistent with the achievement of the
27 active management area's management goals as prescribed by rules adopted by
28 the director pursuant to section 45-576.

29 (c) Except as provided in subdivision (d), if the storer is not a
30 municipal provider, the amount of central Arizona project water stored in an
31 active management area that exceeds the amount of groundwater withdrawn
32 during the calendar year by the storer in that active management area. If
33 the storer withdrew groundwater in an active management area during a
34 calendar year in which the storer stored central Arizona project water
35 underground in that active management area pursuant to the storage permit,
36 the amount of central Arizona project water stored underground during that
37 year equal to the amount of groundwater withdrawn from the active management
38 area shall not be credited to the storer's long-term storage account but may
39 be considered as being available for recovery by the storer on an annual
40 basis under section 45-851.01. FOR THE PURPOSES OF THIS SUBDIVISION,
41 "MUNICIPAL PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-561. In
42 calculating the amount of groundwater withdrawn by the storer from the active
43 management area, the director, at the request of the storer, shall exclude:

44 (i) THE AMOUNT OF any groundwater withdrawn, treated and delivered for
45 direct use as part of a remedial action undertaken pursuant to CERCLA or

1 title 49, chapter 2, article 5. ~~For the purposes of this subdivision,~~
2 ~~"municipal provider" has the same meaning prescribed in section 45-561.~~

3 (ii) THE AMOUNT OF GROUNDWATER WITHDRAWN BY THE STORER DURING THE YEAR
4 FOR MINERAL EXTRACTION AND METALLURGICAL PROCESSING AND DELIVERED DURING THAT
5 YEAR FOR DIRECT USE TO AN IRRIGATION DISTRICT THAT IS ESTABLISHED PURSUANT TO
6 TITLE 48, CHAPTER 19 AND THAT IS LOCATED IN THE SAME ACTIVE MANAGEMENT AREA
7 FROM WHICH THE AMOUNT OF GROUNDWATER WAS WITHDRAWN TO THE EXTENT THAT THE
8 IRRIGATION DISTRICT OR ITS CUSTOMERS DEMONSTRATE A REDUCTION IN THE AMOUNT OF
9 GROUNDWATER THAT THEY OTHERWISE WOULD HAVE WITHDRAWN DURING THAT YEAR WITHIN
10 THE IRRIGATION DISTRICT.

11 (d) The amount of central Arizona project water stored in an active
12 management area in any year after 1994 by an agricultural improvement
13 district established pursuant to title 48, chapter 17 for use at those
14 portions of electrical generating facilities that are constructed or expanded
15 after June 12, 1980, subject to both of the following:

16 (i) If groundwater was used during a year in an active management area
17 at those portions of the electrical generating facilities that were owned and
18 operated by the agricultural improvement district and that were constructed
19 or expanded after June 12, 1980, the amount of the central Arizona project
20 water stored during that year equal to the amount of the groundwater
21 withdrawn during the year for use at those portions of the facilities that
22 were owned and operated by the agricultural improvement district and that
23 were constructed or expanded after June 12, 1980 shall not be credited to the
24 agricultural improvement district's long-term storage account but may be
25 considered as being available for recovery by the agricultural improvement
26 district on an annual basis under section 45-851.01.

27 (ii) Long-term storage credits accrued as a result of the storage of
28 the central Arizona project water may be recovered within the active
29 management area by the agricultural improvement district only for the purpose
30 of providing central Arizona project water to electrical generating
31 facilities that were owned and operated by the agricultural improvement
32 district and only pursuant to any water requirement included in a facility's
33 certificate of environmental compatibility. Subject to section 45-854.01,
34 the long-term storage credits may be assigned by the agricultural improvement
35 district only to the owner of an electrical generating facility for use
36 pursuant to any water requirement included in that facility's certificate of
37 environmental compatibility.

38 (e) Surface water made available by dams constructed or modified after
39 August 13, 1986.

40 (f) Until the year 2025:

41 (i) Effluent.

42 (ii) If the storage facility is in an active management area, water
43 from outside the active management area that would not have reached the
44 active management area without the efforts of the storer.

1 (iii) If the storage facility is outside of an active management area,
2 water from outside the groundwater basin in which the storage facility is
3 located that would not have reached the groundwater basin without the efforts
4 of the storer.

5 (g) Water that is delivered through the central Arizona project and
6 that is acquired by the Arizona water banking authority.

7 23. "Water storage" means adding water to an aquifer or saving water in
8 an aquifer pursuant to permits issued under this chapter.

9 24. "Water storage permit" means a permit issued pursuant to section
10 45-831.01 to store water at a storage facility.

11 Sec. 2. Section 45-802.01, Arizona Revised Statutes, as amended by
12 section 1 of this act, is amended to read:

13 45-802.01. Definitions

14 Unless the context otherwise requires, the terms defined in section
15 45-402 have the same meanings in this chapter and:

16 1. "Aquifer" means a geologic formation that contains sufficient
17 saturated material to be capable of storing water and transmitting water in
18 usable quantities to a well.

19 2. "Area of impact" means, as projected on the land surface, the area
20 where the stored water has migrated or is located.

21 3. "CERCLA" means the comprehensive environmental response,
22 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
23 2767; 42 United States Code sections 9601 through 9657), commonly known as
24 "superfund".

25 4. "Constructed underground storage facility" means a facility that
26 meets the requirements of section 45-811.01 and that is designed and
27 constructed to store water underground pursuant to permits issued under this
28 chapter.

29 5. "District" means a groundwater replenishment district established
30 under title 48, chapter 27.

31 6. "District member" means a member of the groundwater replenishment
32 district as provided by title 48, chapter 27.

33 7. "Electrical district" means a corporate body established pursuant
34 to title 48, chapter 12.

35 8. "Groundwater savings facility" means a facility that meets the
36 requirements of section 45-812.01 in an active management area or an
37 irrigation non-expansion area at which groundwater withdrawals are eliminated
38 or reduced by recipients who use in lieu water on a gallon-for-gallon
39 substitute basis for groundwater that otherwise would have been pumped from
40 within that active management area or irrigation non-expansion area.

41 9. "In lieu water" means water that is delivered by a storer to a
42 groundwater savings facility pursuant to permits issued under this chapter
43 and that is used in an active management area or an irrigation non-expansion
44 area by the recipient on a gallon-for-gallon substitute basis for groundwater

1 that otherwise would have been pumped from within that active management area
2 or irrigation non-expansion area.

3 10. "Long-term storage account" means an account established pursuant
4 to section 45-852.01.

5 11. "Long-term storage credit" means stored water that meets the
6 requirements of section 45-852.01 and that has been credited to a long-term
7 storage account.

8 12. "Managed underground storage facility" means a facility that meets
9 the requirements of section 45-811.01 and that is designed and managed to
10 utilize the natural channel of a stream to store water underground pursuant
11 to permits issued under this chapter through artificial and controlled
12 releases of water other than surface water naturally present in the stream.
13 Surface water flowing in its natural channel is not a managed underground
14 storage facility.

15 13. "Master replenishment account" means an account established
16 pursuant to section 45-858.01 for a groundwater replenishment district.

17 14. "Recipient" means a person who receives in lieu water for use at a
18 groundwater savings facility.

19 15. "Recoverable amount" means the amount of water, as determined by
20 the director, that will reach the aquifer through water storage.

21 16. "Replenishment" means the storage of water or use of long-term
22 storage credits by a groundwater replenishment district to fulfill its duties
23 under title 48, chapter 27, article 3, by a multi-county water conservation
24 district to fulfill its duties under title 48, chapter 22, article 4 or by an
25 active management area water district to fulfill its duties under title 48,
26 chapter 28, article 7.

27 17. "Reserve target" has the same meaning prescribed in section
28 48-3701.

29 18. "Storage facility" means a groundwater savings facility or an
30 underground storage facility.

31 19. "Stored water" means water that has been stored or saved
32 underground pursuant to a storage permit issued under this chapter.

33 20. "Storer" means the holder of a water storage permit issued pursuant
34 to section 45-831.01 or a person to whom a water storage permit has been
35 conveyed pursuant to section 45-831.01, subsection F.

36 21. "Underground storage facility" means a constructed underground
37 storage facility or a managed underground storage facility.

38 22. "Water that cannot reasonably be used directly" means water that
39 the storer cannot reasonably put to a direct use during the calendar year,
40 including:

41 (a) Except as provided in subdivision (b) or except for an
42 agricultural improvement district as provided in subdivision (d), if the
43 storer is a municipal provider, the amount of central Arizona project water
44 that exceeds the amount of mined groundwater withdrawn during the calendar
45 year by the storer in the active management area in which the storer's

1 service area is located. If the storer withdrew mined groundwater during a
2 calendar year in which the storer stored central Arizona project water
3 underground pursuant to the storage permit, the amount of central Arizona
4 project water stored underground during that year equal to the amount of
5 mined groundwater withdrawn from the active management area in which the
6 storer's service area is located shall not be credited to the storer's
7 long-term storage account but may be considered as being available for
8 recovery by the storer on an annual basis under section 45-851.01. In
9 calculating the amount of mined groundwater withdrawn by the storer from the
10 active management area, the director, at the request of the storer, shall
11 exclude any groundwater withdrawn, treated and delivered for direct use as
12 part of a remedial action undertaken pursuant to CERCLA or title 49, chapter
13 2, article 5. For the purposes of this subdivision, "mined groundwater" and
14 "municipal provider" have the same meanings prescribed in section 45-561.

15 (b) If the storer is a municipal provider that has been designated as
16 having an assured water supply pursuant to section 45-576, the amount of
17 central Arizona project water that exceeds the amount of deficit groundwater
18 withdrawn during the calendar year by the storer in the active management
19 area in which the storer's service area is located. If the storer withdrew
20 deficit groundwater during a calendar year in which the storer stored central
21 Arizona project water underground pursuant to the storage permit, the amount
22 of the central Arizona project water stored underground during that year
23 equal to the amount of deficit groundwater withdrawn from the active
24 management area in which the storer's service area is located shall not be
25 credited to the storer's long-term storage account but may be considered as
26 being available for recovery by the storer on an annual basis pursuant to
27 section 45-851.01. In calculating the amount of deficit groundwater
28 withdrawn by the storer from the active management area, the director, at the
29 request of the storer, shall exclude any groundwater withdrawn, treated and
30 delivered for direct use as part of a remedial action undertaken pursuant to
31 CERCLA or title 49, chapter 2, article 5. For the purposes of this
32 subdivision, "municipal provider" has the same meaning prescribed in section
33 45-561 and "deficit groundwater" means that amount of groundwater withdrawn
34 within an active management area for delivery and use within a service area
35 by a municipal provider in excess of the amount of groundwater that may be
36 withdrawn by the municipal provider consistent with the achievement of the
37 active management area's management goals as prescribed by rules adopted by
38 the director pursuant to section 45-576.

39 (c) Except as provided in subdivision (d), if the storer is not a
40 municipal provider, the amount of central Arizona project water stored in an
41 active management area that exceeds the amount of groundwater withdrawn
42 during the calendar year by the storer in that active management area. If
43 the storer withdrew groundwater in an active management area during a
44 calendar year in which the storer stored central Arizona project water
45 underground in that active management area pursuant to the storage permit,

1 the amount of central Arizona project water stored underground during that
2 year equal to the amount of groundwater withdrawn from the active management
3 area shall not be credited to the storer's long-term storage account but may
4 be considered as being available for recovery by the storer on an annual
5 basis under section 45-851.01. ~~For the purposes of this subdivision,~~
6 ~~"municipal provider" has the same meaning prescribed in section 45-561.~~ In
7 calculating the amount of groundwater withdrawn by the storer from the active
8 management area, the director, at the request of the storer, shall exclude:

9 ~~(i) The amount of ANY groundwater withdrawn, treated and delivered for~~
10 ~~direct use as part of a remedial action undertaken pursuant to CERCLA or~~
11 ~~title 49, chapter 2, article 5. FOR THE PURPOSES OF THIS SUBDIVISION,~~
12 ~~"MUNICIPAL PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-561.~~

13 ~~(ii) The amount of groundwater withdrawn by the storer during the year~~
14 ~~for mineral extraction and metallurgical processing and delivered during that~~
15 ~~year for direct use to an irrigation district that is established pursuant to~~
16 ~~title 48, chapter 19 and that is located in the same active management area~~
17 ~~from which the amount of groundwater was withdrawn to the extent that the~~
18 ~~irrigation district or its customers demonstrate a reduction in the amount of~~
19 ~~groundwater that they otherwise would have withdrawn during that year within~~
20 ~~the irrigation district.~~

21 (d) The amount of central Arizona project water stored in an active
22 management area in any year after 1994 by an agricultural improvement
23 district established pursuant to title 48, chapter 17 for use at those
24 portions of electrical generating facilities that are constructed or expanded
25 after June 12, 1980, subject to both of the following:

26 (i) If groundwater was used during a year in an active management area
27 at those portions of the electrical generating facilities that were owned and
28 operated by the agricultural improvement district and that were constructed
29 or expanded after June 12, 1980, the amount of the central Arizona project
30 water stored during that year equal to the amount of the groundwater
31 withdrawn during the year for use at those portions of the facilities that
32 were owned and operated by the agricultural improvement district and that
33 were constructed or expanded after June 12, 1980 shall not be credited to the
34 agricultural improvement district's long-term storage account but may be
35 considered as being available for recovery by the agricultural improvement
36 district on an annual basis under section 45-851.01.

37 (ii) Long-term storage credits accrued as a result of the storage of
38 the central Arizona project water may be recovered within the active
39 management area by the agricultural improvement district only for the purpose
40 of providing central Arizona project water to electrical generating
41 facilities that were owned and operated by the agricultural improvement
42 district and only pursuant to any water requirement included in a facility's
43 certificate of environmental compatibility. Subject to section 45-854.01,
44 the long-term storage credits may be assigned by the agricultural improvement
45 district only to the owner of an electrical generating facility for use

1 pursuant to any water requirement included in that facility's certificate of
2 environmental compatibility.

3 (e) Surface water made available by dams constructed or modified after
4 August 13, 1986.

5 (f) Until the year 2025:

6 (i) Effluent.

7 (ii) If the storage facility is in an active management area, water
8 from outside the active management area that would not have reached the
9 active management area without the efforts of the storer.

10 (iii) If the storage facility is outside of an active management area,
11 water from outside the groundwater basin in which the storage facility is
12 located that would not have reached the groundwater basin without the efforts
13 of the storer.

14 (g) Water that is delivered through the central Arizona project and
15 that is acquired by the Arizona water banking authority.

16 23. "Water storage" means adding water to an aquifer or saving water in
17 an aquifer pursuant to permits issued under this chapter.

18 24. "Water storage permit" means a permit issued pursuant to section
19 45-831.01 to store water at a storage facility.

20 Sec. 3. Retroactivity

21 Section 45-802.01, Arizona Revised Statutes, as amended by section 1 of
22 this act, applies retroactively to from and after December 31, 2009.

23 Sec. 4. Effective date

24 Section 45-802.01, Arizona Revised Statutes, as amended by section 2 of
25 this act, is effective from and after December 31, 2024.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.